

BEFORE THE

APR - 7 1994

Federal Communications Commission

WASHINGTON, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Implementation of Section 9
of the Communications Act
Assessment and Collection of
Regulatory Fees for the 1994
Fiscal Year

MD Docket No. 94-19

To: The Commission

COMMENTS OF APCO

The Association of Public-Safety Communications Officials-International, Inc. ("APCO"), hereby submits the following comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 94-46 (released March 11, 1994), to implement Section 9 of the Communications Act of 1934, as amended. 47 U.S.C. § 159.

APCO is the nation's oldest and largest public safety communications organization, with over 10,000 members involved in the management and operation of communications systems for police, fire, local government, emergency medical, forestry conservation, highway maintenance, and other public safety services. APCO serves as the FCC's certified frequency coordinator for all Part 90 Police, Local Government and 420 MHz and 800 MHz Public Safety channels.

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In 1993, Congress added a new Section 9 to the Communications Act authorizing the FCC to assess and collect "regulatory fees" to recover the costs of the Commission's regulatory activities. See Section 6003 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, 107 Stat. 397, 47 U.S.C. § 159. However, Congress also made clear in new Section 9(h) of the Act that regulatory fees "shall not be applicable" to "governmental entities or nonprofit entities."

Congress recognized that it would be inappropriate in our federal system to require State and local governments to pay regulatory fees to the Federal Government. Imposing such fees would also be an undue and unnecessary burden on State and local government agencies that use their FCC licensed facilities to serve the general public and to protect the safety of life and property.

The Commission's proposed rules to implement Section 9 correctly exclude all governmental entities from regulatory fees. However, the Commission also seeks comments on several issues regarding the definition of "governmental entity," certification procedures, and whether "public safety" entities should be specifically excluded. These issues are addressed below by reference to the relevant paragraphs in the Commission's Notice.

Paragraph 12

APCO agrees with the Commission's proposed definition of "governmental entity" as

any state possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

The same definition is currently used for application fee exemptions. 47 C.F.R. § 1.1112(f).

Paragraph 13

The Commission seeks comment on appropriate procedures for determining whether a licensee or other regulated entity is a "governmental entity." As an FCC-certified Part 90 frequency coordinator, APCO processes over 9,000 private radio applications each year. APCO also represents the interests of public safety licensees throughout the nation. In both capacities, APCO urges the Commission not to adopt a burdensome certification procedure that would add paperwork to the Commission's application process.

At least for Part 90, Subpart B, Public Safety Radio Services, the current application process and license eligibility restrictions are adequate to identify governmental and nonprofit entities that are exempt from both application and regulatory fees. With few exceptions, eligibility for licenses in the Part 90, Subpart B, Public Safety Radio Services is already limited to "any territory,

possession, State, county, city, town, or similar governmental entity." 47 C.F.R. §§ 90.17(a), 90.19(a), 90.21(a), 90.23(a), 90.25(a). While nongovernmental entities have limited eligibility in some Subpart B radio services, their applications must be accompanied by a supporting statement from the "governmental entity having legal jurisdiction over the area to be served," or (in the case of the Emergency Medical Radio Service) the "State's Emergency Plan."^{1/}

Therefore, since nearly all Part 90, Subpart B, eligible applicants are governmental entities (or, in a few cases, primarily non-profit entities applying for public safety licenses with the approval of governmental entities) there is little need for additional certifications or paperwork to determine whether the eligible entity is also exempt from regulatory fees. As discussed below, this suggests that the best approach may be for the Commission to specify in its rules that entities deemed eligible for licensing in Part 90, Subpart B, are exempt from regulatory fees.^{2/} Furthermore, as the Commission notes, there is

^{1/} This limited exception applies only in the Forestry-Conservation, Fire, and Emergency Medical Radio Services. Examples of nongovernmental licensees in these services include volunteer fire departments and EMS squads.

^{2/} A similar exemption could apply to entities eligible under the Commission's proposed Section 88.13, which would apply to a consolidated Public Safety Radio Service. See Notice of Proposed Rulemaking in PR Docket 92-235 (released Nov. 6, 1992) (Appendix D).

legislative history to suggest that all "public safety" entities should be exempt from regulatory fees.

Paragraphs 22-23

The Commission seeks comment as to whether the regulatory fee exemption should apply to all "licensees in the Public Safety Radio and Special Emergency Services" or only to "governmental and nonprofit entities." As indicated above, APCO believes that linking the regulatory fee exemption to eligibility in the Public Safety Radio Services is an efficient method of applying the exemption since virtually all entities eligible in those services are governmental or nonprofit entities.^{3/}

However, it is important that the exemption only apply to entities eligible for Public Safety Radio Service licenses, pursuant to the relevant provisions of Part 90, Subpart B. The mere fact that an entity is "licensed" on a Public Safety channel is insufficient. That could be interpreted to include commercial, non-public safety entities holding licenses on public safety channels by virtue of intercategory sharing. An example would be a Business or Industrial/Land Transportation eligible holding a license in the 806-821/851-866 MHz Public Safety Category pursuant to Section 90.621(g)(1). Such entities use their

^{3/} APCO recognizes that a different approach might be necessary in the Special Emergency Radio Service, in which there are many for-profit licensees.

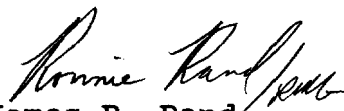
frequencies for commercial enterprises and should not, therefore, be entitled to a regulatory fee exemption.

CONCLUSION

For the reasons discussed above, APCO urges the Commission to adopt rules to exempt governmental and nonprofit entities from regulatory fees, and to do so in a manner that does not impose unnecessary burdens on applicants, frequency coordinators, or the Commission.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
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